IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 263 of 1997
in
SPECIAL CIVIL APPLICATIONNo 5348 of 1982
and
CIVIL APPLICATION NO. 4906 OF 1997

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VADODARA JILLA SAHAKARI DUDH UTPADHAK SANGH LTD
Versus
PIYUSHBHAI N PATEL

Appearance:
1. LETTERS PATENT APPEAL No. 263 of 1997
MR MANISH R BHATT for Appellant No.
MR RP BHATT for Appellant No.
MR RAMNANDAN SINGH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 13/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

This letters patent appeal is filed by the appellants challenging the order of the learned single Judge dated 02.09.1996 passed in Special Civil Application no. 5348 of 1982 wherein the appellants were the petitioners and appellants-petitioners have challenged the order passed by the Industrial Tribunal dated 27.08.1982 in complaint no. 71/77 (Reference IT) no. 332/76 on several grounds. The appeal is pending for final hearing since the date of admission i.e.30.09.1997. Reading the order of admission, it transpires that while admitting the appeal the Division Bench has in turn observed that in the facts and circumstances of the case, the appeal itself is fixed for final hearing on 10.11.1997. Unfortunately, though the appeal was ordered to be notified for final hearing as back as on 10.11.1997, the appeal could not reach for final hearing till date. The civil application no. 3253/97 is filed in this letters patent appeal for stay of operation of the order and said civil application is already disposed of in favour of the appellants meaning thereby that the order under challenge was stayed. The appellants had also taken out application being Civil application no. 4906 of 1997 wherein the appellants had prayed for permission for production of documents which is also pending and as per the order of the Division Bench, the application is ordered to be heard with the main appeal.

We have heard Mr.Bhatt learned advocate for the appellants who were the original petitioners in the Special civil application no. 5348 of 1982 wherein they have challenged the order passed by the Industrial Tribunal dated 27.08.1982 and the learned Single Judge, has by reasoned order, dismissed the special civil application considering the contentions raised before him and the order of the Industrial Tribunal was confirmed. Though Mr.Bhatt has taken us through the order under challenge and the order passed by the Industrial Tribunal, however, in light of the decision in the matter of Ishwarbhai Narottambhai Patel V/s K.H.Trivedi reported in 2003(3)G.L.R.1878, the letters patent appeal filed by the appellants is not maintainable. In para 12 of the said judgment the Division Bench has in turn laid down the principles for considering the question whether

letters patent appeal is maintainable or not. In para 12 it is observes as under :

"12. Accordingly, the following principles would have to be applied while considering the question about maintainability of a Letters Patent Appeal against the judgment of a Single Judge in a petition under Article 226 and/or Article 227 of the Constitution :

(i) Whether the petitioner has invoked jurisdiction of this Court under Article 226 or Article 227, if the learned single Judge has exercised jurisdiction under Article 226, Letters Patent appeal would be maintainable.

(ii) If the judgment rendered by the learned single judge is in exercise of jurisdiction under Article 227 of the Constitution, letters patent appeal would not be maintainable.

(iii) If the single Judge has not stated whether he has exercised his jurisdiction under Arts.226 or 227 of the Constitution, it would be relevant to examine whether the proceeding in question is an original proceeding or the proceeding challenges the decision of a Tribunal. If the proceeding is original, the petition would obviously be under Art.226.

If the petition challenges the decision of a Tribunal, further inquiry should ensue. The expression "Tribunal" would include within its ambit adjudicating bodies, provided they are constituted by the State and are invested with judicial, as distinguished from purely administrative or executive functions. The principal test of determining the character of the authority as Tribunal is whether that authority is empowered to exercise any adjudicating power of the state and whether the same has been conferred on it by any statute or a statutory rule.

If the Tribunal or the Court has exercised judicial function of the State as explained in the decision of the Apex Court in State of Maharashtra v.Labour Law Practitioners' Association 1998(2)GLR 1079(SC) : AIR 1998 SC 1233 and the Tribunal or the Court is subordinate to the High Court within the meaning of Art.235 of the Constitution, then a presumption will be raised that the single Judge has exercised his

jurisdiction under Art.227 of the Constitution.

(iv) If the single Judge has not stated under which provision he has decided the matter and where the facts justify filing of petition both under Art.226 and Art.227 and the Court has decided the petition on merits, the Letters Patent Bench would consider whether substantial part of the order sought to be appealed against is under Art.226 or not. If it is found that the substantial part of the order sought to be appealed against is under Art.226, Letters Patent Appeal would be maintainable,but not otherwise.

(v) If substantial part of the order sought to be appealed against is under Art.226, Letters Patent Appeal would not become non-maintainable merely because in the final order the single Judge has given ancillary directions which may pertain to Art.227."

The title of the petition shows that the appellants have challenged the order of the Industrial Tribunal under Article 226 and 227 of the Constitution of India. In light of the above decision, we are not required to answer the contentions raised in this appeal or to examine the order under challenge passed by the learned Single Judge and accordingly only on that ground the appeal is not competent and is required to be disposed of. As the appeal itself is not maintainable in light of the aforesaid decision of this court, the application filed by the appellants in this appeal which is ordered to be heard with this appeal is also not required to be entertained.

Accordingly, the appeal no. 263 of 1997 is dismissed. Rule in civil application no. 4906 of 1997 is discharged. No orders as to costs.

Interim relief which is in force till today, considering the request made by Mr.Bhatt, is extended for a further period of eight weeks on the same terms.

(D.K.TRIVEDI, J)

(SHARAD D DAVE, J)

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